

Final

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

10,835
10,840

FILE: B-193604

CNG-00754

DATE: July 24, 1979

DLG-00354

MATTER OF: Dynalectron Corporation; Serv-Air, Inc.

[Protest of Aircraft Maintenance Contract Award]

DIGEST:

1. Record supports conclusion that offeror was misled into reasonable belief that only two deficiencies remained in amended proposal where list of five deficiencies upon which discussions were based omitted some deficiencies and showed three others to be cleared by amendment.
2. We cannot state unequivocally that protester was not prejudiced where protester was misled concerning some deficiencies and not advised of others for which protester was assessed approximately 31 points out of total of 35 deducted, and where evaluation scores of protester and awardee differ by only 12 points out of 1,000. Protest is sustained.

CNG-00879

The Dynalectron Corporation (Dynalectron) and Serv-Air, Inc. (Serv-Air), a subsidiary of E-Systems, Inc., have protested the award of a contract to Northrop Worldwide Aircraft Services (Northrop) for aircraft maintenance at Fort Bliss, Texas. For the reasons stated below, we sustain the protest and recommend that the option for additional year terms not be exercised.

In June 1978 the procurement division at Fort Bliss issued a request for proposals (RFP) for the maintenance and servicing of the fixed and rotary wing aircraft assigned to various units on the base. The RFP contemplated the award of a cost-plus-fixed-fee (CPFF)

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contract for an initial term of 1 year with two option years and advised offerors that technical factors would be more important than cost in the evaluation of proposals. The Government reserved the right to accept other than the lowest cost proposal.

A technical evaluation board (the board) reviewed the four proposals submitted in response to the solicitation over the period August 16-18, resulting in an initial scoring of proposals and advice to the contracting officer of the results. On August 31 an amendment to the RFP was issued to all offerors reflecting a minor change in the organizational alignment and support capability of one of the units on the base and changing the initial term of the contract to be awarded from 1 year to 10 months. Offerors were given until September 15 to amend their proposals to reflect these changes. Dynalectron incorporated certain additional changes in its amended proposal which addressed some of the deficiencies which the board had found in Dynalectron's proposal. There is no evidence that the board evaluated these amendments at any time prior to discussions. On September 7 the contracting officer requested clarification from the board regarding its findings concerning two of the proposals, specifically pointing out to the board the requirement of Defense Acquisition Regulation (DAR)/ASPR § 3-805.3 (1976 ed.) that offerors be advised during negotiations of deficiencies in their proposals, to which the board responded with more details. On October 17 the board again reviewed all of the proposals at the request of the contracting officer to insure that a consistent review had been made of all four proposals.

Proposals were scored on the basis of 1,000 points, allocated 600 points to technical factors and 400 points to cost factors. Results of the initial evaluation were as follows:

	<u>Tech.</u>	<u>Cost</u>	<u>Total</u>
Northrop	587	378	965
Dynalectron	569	393	962
Hawthorne	563	398	961
Serv-Air	519	378	897

Negotiations were held with all offerors on October 31, 1978. Best and final offers were submitted on November 9, 1978.

The board evaluated the best and final offers, but did not change its initial scores on the basis that although each offeror had made positive changes in its proposal, the improvements were proportional and did not justify a change in the rankings. The cost evaluation scores were changed, with the final results as follows:

	<u>Tech.</u>	<u>Cost</u>	<u>Total</u>	<u>CPFF Price</u>
Northrop	587	390	977	\$988,948
Dynalelectron	569	396	965	928,650
Hawthorne	563	398	961	952,986
Serv-Air	519	390	909	776,451

The contract was awarded to Northrop on November 17.

On November 30 Dynalelectron filed a protest with our Office contesting the propriety of the Army's evaluation of proposals. Dynalelectron also contended that the difference between the technical scores awarded to Dynalelectron and Northrop was insignificant and that the proposals should have been considered technically equal and award made to Dynalelectron on the basis of its lower cost. After a December 13 debriefing, Dynalelectron supplemented its protest to incorporate allegations that no meaningful discussions were held during negotiations. In connection with this last matter, Dynalelectron states that it was advised during the debriefing of deficiencies in its proposal which were not mentioned during oral discussions.

In this connection, the record shows that at oral discussions held on October 31, the Army provided Dynalelectron with the following list of deficiencies in its technical proposal:

"Technical Review Questions

"Dynalelectron Corporation

"1. In the areas of concept and manpower as it relates to Fixed Wing Aircraft, it is felt there could be some improvements in this area.

(Cleared by Amendment)

"2. It was considered as inappropriate for the production control function to be completely removed from the maintenance department.

(Cleared by Amendment)

"3. The ability of the proposed manager to supervise both Supply and Production Control Sections was questioned.

(Cleared by Amendment)

"4. The direct labor strength is considered less than optimum for performance of maintenance support.

"5. Mil I 45208A is required in lieu of Mil Q 9858A."

Dynalectron indicates that it interpreted the "Cleared by Amendment" language following each of the first three questions to indicate that the changes it submitted with its proposal revisions of September 15 had satisfied the Government's objections in these three areas and that they were no longer deficiencies. In its best and final offer, Dynalectron mentions one significant event, the rehiring of a key staff member after the date of its September 15 proposal revisions, and otherwise refers only to its September 15 revisions in its responses to the first three questions; Dynalectron's response to the fourth question, which was not "cleared by amendment," incorporates a change in personnel strength, a revised manning and organization chart, and a discussion of the cost benefits and efficiencies which would result from the retention of Dynalectron personnel. As the incumbent, Dynalectron responded that its current procedures and manuals complied with military specification MIL-I-45208A in answer to question No. 5.

At the debriefing held on December 13, the Army advised Dynalectron that its proposal was downgraded for what were considered deficiencies in the following areas:

1. Weakness in the area of current and past contract experience.
2. Indirect personnel strength weakness.

3. Unrealistic direct cost.
4. Weakness in proposal for training of personnel.

Dynalectron asserts that none of these deficiencies were discussed during negotiations and has presented a sworn affidavit to that effect from one of its attending officials. The contracting officer disagrees and states that all of these matters were discussed during negotiations and that Dynalectron was afforded the opportunity to upgrade its proposal with respect to those matters before the presentation of best and final offers.

Serv-Air filed its protest with our Office on December 27, 1978, after a debriefing on December 14. Serv-Air alleges that it also was advised for the first time in the debriefing of certain deficiencies in its proposal. Serv-Air also protested the Army's cost evaluation, contending that it was at least questionable, and raised other contentions similar to those expressed by Dynalectron. The Army contends that Serv-Air's objections to its oral discussions are untimely under our Bid Protest Procedures, 4 C.F.R. part 20 (1978), because in its protest to our Office Serv-Air acknowledged that it recognized at the time of its oral discussions that they were "totally meaningless" but that it declined to protest at that time to preserve "good relations with our prospective customer."

The provisions of DAR § 3-805.3(a) (1976 ed.) require that offerors be advised of deficiencies in their proposals. Generally, once discussions are initiated with an offeror, the procuring agency must point out all deficiencies in that offeror's proposal where the applicable regulation so requires. Checchi and Company, B-187982, April 4, 1977, 77-1 CPD 232; Teledyne Inet, B-180252, May 22, 1974, 74-1 CPD 279. We have held that requests for clarification or amplification or other statements made during oral discussions which lead offerors into areas of their proposals that are unclear are sufficient to alert offerors to deficiencies in their proposals. E-Systems, Inc., B-191346, March 20, 1979, 79-1 CPD 192; Serv-Air, Inc., B-189884, September 25, 1978, 78-2 CPD 223; Houston Films, Inc., B-184402, December 22, 1975, 75-2 CPD 404; 53 Comp. Gen. 382 (1973). We have regarded

as deficient negotiations which led an offeror reasonably to believe that a problem area had been cleared up during oral discussions because of the lack of specific identification of a proposal weakness. Checchi and Company, supra.

At the outset, we observe that the list of deficiencies provided to Dynalectron at its oral discussions is a generalized composite of the majority of the specific deficiencies found by the board in its evaluation of Dynalectron's initial proposal. In this connection, the board penalized Dynalectron most heavily in the areas of concept of operations--defined essentially as the offeror's realism and ability to relate all requirements into a single operation, organizational structure--primarily a function of the offeror's proposed lines of authority and staffing, and unrealistic direct cost--traceable to concern over Dynalectron's direct labor staffing level. Dynalectron was also assessed significant points for a perceived lack of experience in the maintenance of fixed and rotary wing aircraft and in past and present Government contracts, its proposed indirect and direct personnel strengths, and its proposed levels of supervision. The board deducted fewer points in other areas such as training.

We do not think that Dynalectron was advised of all of these deficiencies. We have listened to a tape recording of Serv-Air's discussions with the Army, obtained by ServAir from the Army through a Freedom of Information Act request, which discloses that the Army conducted discussions by permitting each offeror to ask questions based on the list of deficiencies provided to each offeror at the opening of discussions. In this connection, we note that the list of deficiencies provided to Dynalectron makes no reference to weaknesses in either training or experience, either of which may have been correctable through the submission of additional information or clarification, and that the majority of the areas in which Dynalectron's proposal was downgraded are related to the first three of the deficiencies named on Dynalectron's list, each of which was noted as "cleared by amendment." We believe that these notations lulled Dynalectron into the reasonable belief that each of these three areas had been improved to the Army's satisfaction by its September 15 proposal modification and regard it as highly improbable

that even the most astute offeror would have pursued a line of questioning which would have led it to discover the related weaknesses underlying these deficiencies or to consider further changes in its proposal concerning the listed areas. We regard the cumulative effect of the notations appended to some items on Dynalectron's list of deficiencies and the omission of other items from the list, coupled with Dynalectron's treatment of its best and final offer, as persuasive evidence that Dynalectron was misled into believing that the only deficiencies remaining in its proposal were those represented by the last two statements on its list of deficiencies and that the additional deficiencies were not disclosed. We conclude that the Army failed to conduct meaningful negotiations with Dynalectron.

We have in past cases declined to recommend remedial action where the record affirmatively demonstrated that a protester suffered no prejudice as the result of a failure to conduct meaningful negotiations. In Checchi and Company, supra, we declined to recommend remedial action where the record showed that even with proper advice of a deficiency which the protester had been led to believe had been resolved, the protester would have been unable to improve its proposal sufficiently to be entitled to award. And, in Houston Films, Inc., supra, we declined to recommend remedial action because the cost impact on the protester's proposal resulting from being misled by a question asked during discussions was not so great that its absence would have entitled the protester to award of the contract.

In this case, however, Dynalectron and Northrop were separated in their technical and cost evaluation scores by a mere 12 points out of a total of 1,000. We note also that approximately two-thirds of the total of 35 points which Dynalectron was assessed appear to be attributable to the first three of Dynalectron's listed deficiencies and related areas, while an additional 7 points were assessed for experience deficiencies which are not related to any of the listed deficiencies. In these circumstances, and absent final evaluation scores which might provide a basis for comparison, we cannot state unequivocally that Dynalectron was not prejudiced by the Army's failure to conduct meaningful negotiations.

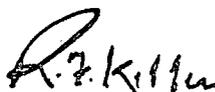
The protest is sustained. Because the first year of performance is almost completed, we recommend that the options for additional years not be exercised.

Because we are sustaining Dynalectron's protest on the basis that the Army failed to conduct meaningful discussions, we will not consider the other issues raised. We will, however, comment on Serv-Air's allegation that the cost evaluation appears questionable. We note in this connection that although the contract price analyst determined each offeror's proposed costs to be realistic when considered in conjunction with proposed staffing requirements and other associated costs, the low and high cost offerors, Serv-Air and Northrop respectively, received identical scores on their cost evaluations despite a difference in their total estimated costs of approximately \$212,000. Even if we adjust these two offeror's proposed staffing levels to conform to the Army's estimate, used by the Army as the primary index of cost realism for which both Serv-Air and Northrop were assessed 10 points, and measure the cost impact of the adjustments on the basis of the highest cost per staff-member proposed by any offeror, the cost difference between these proposals is still on the order of \$60,000. We think that there is an inconsistency in this substantial cost difference, the determination that these offeror's costs are realistic, and their identical cost evaluation scores. We suggest that greater attention be paid to the methods used in the cost evaluation of proposals when this requirement is again solicited.

By letter of today, we are advising the Secretary of the Army of our recommendation.

This decision contains a recommendation for corrective action to be taken. Therefore, we are furnishing copies to the Senate Committees on Governmental Affairs and Appropriations and the House Committees on Government Operations and Appropriations in accordance with section 236 of the Legislative Reorganization Act of 1970, 31 U.S.C. § 1176 (1976), which requires the submission of written

statements by the agency to the Committees concerning the action taken with respect to our recommendation.



Deputy Comptroller General
of the United States